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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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11 V5 TECHNOLOGIES,
12 Plaintiff(s),
13 v.
14 SWITCH, LTD., et al.,
15 Defendant(s).

Case No.: 2:17-cv-02349-KJD-NJK

ORDER

[Docket No. 101]

16 Pending before the Court is Plaintiff's motion to compel non-party discovery from Nicole
17 Folino. Docket No. 101. Ms. Folino argues in opposition that, *inter alia*, the motion should be
18 denied as untimely. *See* Docket No. 103 at 9-10. Plaintiff responds in reply that its motion is
19 timely. *See* Docket No. 105 at 12-13. Neither party addresses the full standards that govern this
20 issue, however.

21 A party may not unduly delay in moving to compel discovery. *E.g., Gault v. Nabisco*
22 *Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999). While guideposts have been developed regarding
23 timeliness of motions to compel, there are no bright-line rules and the timeliness of each motion
24 must be determined based on the circumstances specific to that case. *Williams v. Las Vegas Metro.*
25 *Police Dept.*, 2015 WL 3489553, at *1 (D. Nev. June 3, 2015). Several judges in this District have
26 identified a non-exhaustive list of factors to use in determining the timeliness of a discovery
27 motion: (1) the length of time since expiration of the deadline; (2) the length of time the moving
28 party has known about the discovery; (3) whether the discovery deadline has been previously

1 extended; (4) the explanation for the tardiness or delay; (5) the age of the case; (6) any prejudice
2 to the party from whom the discovery is sought; and (7) disruption of the court's schedule. *See id.*
3 (collecting cases).¹

4 Given the circumstances, the Court will order supplemental briefing. Plaintiff shall file a
5 supplemental brief addressing the above standards by May 30, 2019, and Ms. Folino shall file a
6 responsive supplemental brief by June 5, 2019. These briefs must be no longer than 12 pages.

7 IT IS SO ORDERED.

8 Dated: May 24, 2019

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12 Nancy J. Koppe
13 United States Magistrate Judge
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25 ¹ These standards have been applied in the context of non-party discovery sought under
26 Rule 45 of the Federal Rules of Civil Procedure. *See, e.g., Bartech Sys. Int'l, Inc. v. Mobile Simple*
27 *Sols., Inc.*, 2018 WL 1787905, at *2 (D. Nev. Jan. 31, 2018). Plaintiff notes in reply that the
28 applicable rule allows for the filing of a motion to compel "[a]t any time." *See* Docket No. 105 at
13 n.3 (quoting Fed. R. Civ. P. 45(d)(2)(B)(i)). To the extent there is a reasonable basis for doing
so, Plaintiff is not precluded by this order from arguing that the above standards do not apply to a
motion to compel brought pursuant to Rule 45(d)(2)(B)(i).